



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

May 17, 1991

Ms. Karen Cox
State Board of Insurance
Legal Services 016-1
1110 San Jacinto
Austin, Texas 78701-1998

OR91-235

Dear Ms. Cox:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12244.

The State Board of Insurance (the board) received an open records request for an internal auditor's report that discusses a rehabilitation plan for Commodore County Mutual Insurance Company. You contend that the entire audit may be withheld because the audit currently exists in draft form only. Governmental entities may not, however, withhold information from the public merely because it does not currently exist in its "final form." Open Records Decision Nos. 344, 321 (1982), *overruling* Attorney General Opinion H-90 (1973). The information at issue has been "collected, assembled, or maintained by or for" the board and so must be released unless it comes under the protection of one of the act's exceptions to disclosure. See V.T.C.S. art. 6252-17a, §3(a).

You next contend

[t]he Internal Audit Act requires internal audit programs to conform to the 'Standards for the Professional Practice of Internal Auditing' promulgated by the Institute of Internal Auditors. Those standards require auditors to discuss conclusions with appropriate levels of management before issuing a final report. Releasing the draft report before auditors have an opportunity to consult with required levels of management violates those standards.

The standard you refer to pertains to the auditor's issuance of a final audit report. It does not make a draft report unavailable under the Open Records Act. If the board is concerned that the draft report may inaccurately reflect the contents of the final report, it would be appropriate for the board to issue a disclaimer with the draft report.

Finally, you contend that section 3(a)(11) protects the entire audit from required public disclosure because any factual information contained in the audit is inextricably intertwined with other information protected by section 3(a)(11):

The audit report uses factual material to support arguments for the auditor's recommended changes of agency policy. Consequently, it is impossible to separate the factual material from the recommendations.

We disagree. *See* Open Records Decision No. 538 (1990). We have marked a representative sample of the audit that consists of information protected by section 3(a)(11) that is clearly severable from factual information. If you intend to withhold other information in the report pursuant to section 3(a)(11), you must return to this office within 14 days of the date of this letter a marked copy of the report indicating the precise portions you wish to withhold. Absent such a showing, the report must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-235.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/RWP/lb

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Enclosures: Open Records Decision Nos. 344, 321
Submitted documents

cc: Burnie Burner
Long, Burner, Parks & Sealy
100 Congress, Suite 1600
P.O. Box 2212
Austin, Texas 78768-2212